

ZB# 01-03

Seymour Borden

35-1-54.1 & 53.21

Prelim.

Feb. 26, 2001.

Public Hearing:

March 26, 2001.

Pass 4-0

| Approved.

Refund:

\$331.00

#01-03 - Borden, Seymour

35-1-54.1 + 53.21. Area





APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)

APPLICANT: Borden - Carpet Mill Outlet

FILE# 01-03

RESIDENTIAL: \$50.00

COMMERCIAL: \$150.00

INTERPRETATION: \$150.00

AREA X

USE

APPLICATION FOR VARIANCE FEE.....\$ 150.00

*

*

*

ESCROW DEPOSIT FOR CONSULTANT FEES.....\$ 500.00

DISBURSEMENTS:

STENOGRAPHER CHARGES: \$4.50 PER PAGE

PRELIMINARY MEETING-PER PAGE 7/24/01-9 \$ 40.50

2ND PRELIMINARY- PER PAGE 3/26/01-13 \$ 58.50

3RD PRELIMINARY- PER PAGE.....\$

PUBLIC HEARING - PER PAGE.....\$

PUBLIC HEARING (CONT'D) PER PAGE.....\$

TOTAL.....\$ 99.00

ATTORNEY'S FEES: \$35.00 PER MEEETING

PRELIM. MEETING: 7/24/01.....\$ 35.00

2ND PRELIM. 3/26/01.....\$ 35.00

3RD PRELIM.....\$

PUBLIC HEARING.....\$

PUBLIC HEARING (CONT'D).....\$

TOTAL.....\$ 70.00

MISC. CHARGES:

.....\$
TOTAL.....\$ 169.00

LESS ESCROW DEPOSIT.....\$

(ADDL. CHARGES DUE).....\$

REFUND DUE TO APPLICANT..\$ 331.00

*Paid ck #4824
3/13/01
Paid-ck #4825*

Date _____

TOWN OF NEW WINDSOR

**TOWN HALL, 555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553**

TO

Carpet Mill Outlet

DR.

294 Windsor Highway - Rt. 32

New Windsor, N.Y. 12553

DATE _____

CLAIMED

ALLOWED

05/07/01

Refund of Escrow Dep. # 01-03 ZBA.

\$ 331.00

Patricia A. Corsetti
ZBA

CARPET MILL OUTLET
294 WINDSOR HWY RT 32
NEW WINDSOR, NY 12553

4824

1-108/210

DATE: 3/8/01

PAY TO THE
ORDER OF

Town of New Windsor

\$ 150.⁰⁰/₁₀₀

One hundred fifty and ⁰⁰/₁₀₀

DOLLARS

Security features
on the back
include a mark

HSBC

HSBC Bank USA Middletown, NY 10941

FOR 2BA # 01-03

Tenn E Bond

⑆021001088⑆496140125⑈ 4824

NEW WINDSOR, NY 12553

4825

1-108/210

PAY TO THE ORDER OF

DATE 3/8/01

Town of New Windsor
Five Hundred and 00/100

\$ 500.00

HSBC

HSBC Bank USA Middletown, NY 10941

DOLLARS

Security features
included
Details on back

FOR

ZBA # 01-03

00210010881496140125 4825

[Signature]

In the Matter of the Application of
SEYMOUR BORDEN

MEMORANDUM OF
DECISION
GRANTING AREA
VARIANCES

#01-03.

WHEREAS, SEYMOUR BORDEN, 84 Sycamore Drive, Middletown, New York 10940, has made application before the Zoning Board of Appeals for an 18 ft. maximum building height and 59 parking space variance for construction of an addition to the Carpet Mill Outlet on Route 32 in a C zone; and

WHEREAS, a public hearing was held on the 26th day of March, 2001 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant was represented by Greg Shaw, P. E.; and

WHEREAS, there was one spectator appearing at the public hearing; and

WHEREAS, one person spoke in opposition to this Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.

2. The evidence presented by the Applicant showed that:

(a) The property is a commercial property located in a C zone on a busy commercial highway.

(b) The Applicant seeks variances in order to construct an addition to the present structure. The proposed addition will be for warehouse use.

(c) The Applicant intends to acquire property additional to his present parcel so as to enable this building addition to be built.

(d) The addition proposed by the Applicant will have its front face in line with the front face of the existing building. The Applicant seeks a variance for front yard depth because the Zoning Code of the Town of New Windsor as it is now written makes the front yard deficient although it appears to have been adequate under the prior law.

(e) The proposed addition to the building would provide four additional parking spaces on the east side of the new addition together with a fire lane on the north side. Since the new addition, if built, would require six additional parking spaces whereas the new site layout provides for only four such spaces. In addition to the foregoing, the present Zoning Code of the Town of New Windsor that requires a total of 70 spaces. Eleven spaces will be provided after construction by combining the existing parking with the additional parking provided.

(f) With respect to front yard depth, the addition which is proposed to be built will be no closer to the road than the present structure. The distance to the front of the parcel, however, under the present Code is deficient. Therefore a variance is sought by the Applicant.

(g) With respect to building height, the height permitted by the Code as it is presently written is only one of four feet. The existing building is 18 ft. tall and the proposed addition is to be 22 ft. tall. The Applicant proposes to make the new addition 22 ft. high in order to accommodate 15 ft. rolls of carpet in an upright position.

(h) Under the present Zoning Code, it is the position of the Building Inspector that all of the proposed area must be treated as retail space. In fact, a considerable portion of that space will be used not for retail, but for office or warehouse use with a small portion being used for office and the majority being used for warehouse. The large number of parking spaces required are a result of this retail calculation.

(i) The Applicant has requested variances for minimum lot area, minimum lot width, required side yard and total of both side yards. These are conditions which pre-exist the enactment of a Zoning Code in the Town of New Windsor and are not made any greater by

the lot line change for the construction of a new addition. In fact, at least two of the variances will be made less.

- (j) The speaker at the meeting was an attorney for the owner of an adjacent parcel. Objection was made based on this attorney's allegation that his client, Polyworks, owns a strip of land which is bordering on the Applicant's land. The speaker was assured by the Board that it is not relying on any land owned by Polyworks to meet any lot area, setback, side yard, fire lane or other requirements.
- (k) The speaker also objected based on the allegation that in the past the sign used by the Applicant was on Polyworks land.
- (l) The speaker was assured that no decision of the Board would effect Polyworks property rights in any way, either affirmatively or negatively and that no action of the ZBA would add to or subtract from the property rights of adjacent property owners.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The requested variances will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
2. There is no other feasible method available to the Applicant which can produce the benefits sought.
3. The variances requested are substantial in relation to the Town regulations but nevertheless are warranted.
4. The requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
5. The difficulty the Applicant faces in conforming to the bulk regulations is partially self-created but nevertheless should be allowed.
6. The benefit to the Applicant, if the requested variances are granted, outweigh the detriment to the health, safety and welfare of the neighborhood or community.
7. The requested variances are appropriate and are the minimum variances necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local Law and at the same time preserve and protect

the character of the neighborhood and the health, safety and welfare of the community.

8. The interests of justice will be served by allowing the granting of the requested area variances.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for an 18 ft. front yard, 18 ft. maximum building height and 59 parking space variance for construction of an addition to Carpet Mill Outlet on Route 32 in a C zone.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: June 11, 2001.


Chairman

Date 3/17/61, 19.....

TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553TO Frances Roth DR.
168 W. Drury Lane
Newburgh, N.Y. 12550

DATE			CLAIMED	ALLOWED
3/16/61	Zoning Board Mtg (Denise)		75 00	
	Misc - 4			
	VSH Realty - 3			
	McCurry - 3			
	Courguila Lyons - 4			
	Borden - 13	58.50.		
	Mel. Car - 2		130 56	
	= 29			
			205 50	

PUBLIC HEARING:

BORDEN, SEYMOUR

MR. TORLEY: Request for 18 foot front yard, 18 foot maximum building height and 59 parking space variances for construction of an addition to Carpet Mill Outlet on Route 32 in a C zone.

Mr. Gregory J. Shaw, P.E. appeared before the Board for this proposal.

MR. TORLEY: Is there anyone in the audience besides the applicant that wishes to speak on this matter?

MR. FINTZ: Yes, your honor.

MR. TORLEY: Besides the applicant. Anybody else who wishes to speak on this?

MR. BABCOCK: Mr. Chairman, I think this gentleman is in the audience.

MR. TORLEY: Is there anyone besides this gentleman that wishes to speak on this?

MR. FINTZ: I faxed a copy of that.

MR. KANE: I need your name and address, please. For the record, let it be noted that 35 envelopes were sent out advertising the public hearing and no formal response that I can find.

MR. TORLEY: Let the record show that this letter and comment from Mr. Alan Fintz was given to us at the meeting tonight.

MR. FINTZ: I'd be glad to summarize it because it's probably easier.

MR. KANE: When we open it up to the public, you will have a chance.

MR. TORLEY: Okay.

MR. SHAW: My name is Gregory Shaw. I'm with Shaw Engineering tonight and I'm representing Seymour Borden and the Carpet Mill Outlet, Warehouse & Showroom. Maybe the best way to enter our petition into the record is to read from the narrative which I submitted along with

the zoning board application. And if you just bear with me, I think it pretty well summarizes our we to this board. "Seymour Borden, owner of Carpet Mill Outlet, Warehouse and Showroom, owns a 22,596 square foot parcel of land located on the west side of Windsor Highway. The subject parcel is within the Design Shopping Zoning District. Mr. Borden presently has a Lot Line Change Application before the New Windsor Planning Board to re-align 10,858 square feet of property from the Lands of Kaufman, north of Carpet Mill Outlet, with his property. Upon adding this land to his existing parcel, his new parcel size will be 33,454 square feet. Upon Lot Line Change Approval and obtaining ownership of the 10,858 square foot parcel, Mr. Borden proposes to construct a 6,000 square foot addition on the north side of Carpet Mill Outlet. This addition will be solely for warehouse use, while the existing building will continue to be used for office and retail/display. All of these uses are permitted within the Design Shopping Zone. Associated site improvements will consist of 4 additional parking spaces on the east side of the new addition, and a fire lane on the north side of the new addition. The construction of this new addition will require 3 Area Variances where the degree of non-conformance will increase from existing conditions. These Variances are for Minimum Front Yard Depth, Maximum Building Height, and Minimum Off-Street Parking. To correct the existing non-conforming condition that will not increase from existing conditions, additional Area Variances are also being requested for Minimum Lot Area, Minimum Lot Width, Required Side Yard, and Total Both Side Yards. The common thread that runs through all of the 7 requested Area Variances is the fact that this parcel was created, and the existing building was built in excess of 30 years ago when the Town of New Windsor Zoning Ordinance was less stringent. It can be safely stated that at the time when the building was built and site improvements were constructed, they both met the zoning regulations of the Town of New Windsor. Today under the revised zoning regulations, both the lot and the placement of the building on the lot are deficient. It must again be noted that these deficiencies presently exist and are not caused by the Lot Line Change or the construction of the new addition. In fact with the approval of the Lot Line Change, the lot will be increased in area and width, and thus become more conforming. Regarding the Variance for Required Front Yard Depth, the existing building has a depth of 47 feet, 13 feet less than the 60 feet

required by the Zoning Ordinance. For aesthetic reasons, the front face (easterly) of the new addition will be in line with the front face existing building. Unfortunately, the front face of the existing building and new addition are not parallel with easterly property line, and this reduces the required front yard depth for the new addition. At the most northerly point of the front face of the new addition, the Required Front Yard Depth is only 42 feet. While this is only 5 feet less than the present Front Yard Depth, an Area Variance of 18 feet is being requested for the deficiency from the 60 feet required by current zoning. New Windsor's Zoning Ordinance limits the Maximum Building Height of a structure in the Design Shopping Zone to 12 inches for every foot of distance from the nearest lot line. As the existing building is only 4 feet from the south lot line, the maximum building height permitted by zoning is 4 feet. The existing building height of Carpet Mill Outlet is 18 feet, and this is considered to be a non-conforming condition. The new warehouse addition will be 22 feet in height. While this is only a 4 feet increase above the existing building height, and Area Variance of 18 feet is being requested for exceeding the 4 feet building height limitation. The reason for this increase in building height to 22 feet is that an 18 foot high addition is insufficient to stack 15 foot long rolls of carpet in an upright position. It must be noted that the nearest lot line to the new addition is 30 feet, thus allowing a building height of 30 feet had the existing building been built in conformance with the current zoning. The existing building is 9,400 square feet in size of which 345 square feet is used as office space, and 9055 square feet is used as retail/display space. For these uses, New Windsor's Zoning requires a total of 64 spaces for Off-Street Parking. Presently at this site there are 7 parking spaces. While the new addition will require 6 additional spaces, the new site layout will provide only 4 additional spaces, thus creating and additional deficiency of 2 parking spaces. Consistent with the other requested variances, this requested Off-Street Parking Variance will be for 59 spaces (a total of 70 spaces required by zoning less the 11 spaces provided after construction) rather than the 2 spaces (6 spaces required by the new addition less the 4 new spaces to be added during construction of the new addition). As presented above, the construction of this new addition will require 3 Area Variances where the degree of non-conformance will increase from existing conditions. Using the existing

non-conforming conditions as a baseline, the increase in deficiency for Required Front Yard Depth is 5 feet, for Maximum Building Height is 4 feet, and for Minimum Off-Street Parking is 2 spaces. The granting of the 3 Variances is not substantial when considering that they are due to the stringent revisions to New Windsor's Zoning Ordinance since the creation of the Carpet Mill Outlet lot, and the construction of its building. The granting of all the Variances is not detrimental to the health, safety, or welfare of the neighborhood since the property is located in the Design Shopping Zone, and is a permitted use. The granting of the Variances will not have an adverse effect or impact on the physical or environmental conditions on the neighborhood or zoning district. The granting of the Variance will not produce an undesirable change in the neighborhood or be a detriment to adjoining properties. There is no other method that Mr. Borden can feasibly pursue other than the Variances sought in this Application. In view of all the facts and circumstances presented to this Board, the Applicant respectfully requests that the Variances sought be granted." I wanted to get that into the record because it is a somewhat complicated application. If I could just summarize very simply. We're asking for three variances where the degree of non-conformance is increasing: Front yard depth, building height, and minimum off-street parking. And again, also as I discussed when I was here before this board four weeks ago, there are four other areas that the Board felt should be incorporated into this application even though the deficiencies are not increasing, they are simply non-conforming conditions. So with that, there are seven requests for area variances from this board on this application.

MR. TORLEY: At the preliminary meeting I asked you, I believe, to speak to the impact of the conversion of the R-5 zone use to the commercial use and whether or not the extra paving and parking or fire lanes which protrude more than the 30 feet permitted in a residential zone would be covered under the code application of adjoining properties.

MR. SHAW: As we spoke at the preliminary meeting, it's my understanding that when you talk about the extending of the use into an adjacent zone, you're speaking primarily to the structure. We did not originally propose any improvements such as of fire line on the north side of the building. That was suggested by Bob

Rogers the fire inspector for fire protection. So that's a cost that my client decided to bear in order to comply with New Windsor and to grant the proper fire protection for the structure. Again, the building is within the 30 feet. The fire lane is not. But, again, it's my understanding that the 30 feet deals with the structure not necessarily the site improvements.

MR. TORLEY: Well, R-5, I forgot the developmental area coverage permitted in R-5, but if that was considered here, you would be exceeding that with the parking.

MR. SHAW: You're losing me.

MR. TORLEY: An R-5 zone can only have a certain fraction of the lot paved or in any other way covered up. Because you have this adjoining lot you're allowed the 30 feet in for your building, but by paving the rest of it, aren't you exceeding the developmental area coverage that would be required for the rest of the R-5 zone?

MR. SHAW: Well, I think the way it's viewed is that with the lot line change application before the Planning Board, this is all going to be one lot.

MR. TORLEY: But you're only permitted 30 feet of commercial use into the R-5 zone no matter how big the extra piece of property you bought was.

MR. SHAW: But are we getting involved with semantics? You're viewing as just looking at that piece of this future combined lot which is in the R-5 zone as opposed to pulling back and looking at all of the zoning requirements for the lot combining both which is in the commercial zone and R-5 zone.

MR. TORLEY: One step at a time. If you're taking a piece of R-5 zone property, whether or not you agree that's the appropriate zone for that area, but it is zoned R-5, by using the lot line change, the code permits you to have 30 feet of that R-5 zoned property used for your commercial activities.

MR. KANE: If I understand you correctly, Greg, the 20 foot macadam fire lane on the side is not a requirement that was needed to put there, that you put this particular paving strip down the side of the building at the request of the fire?

MR. SHAW: Correct.

MR. KANE: Without this, then they would probably be underneath it and they would be doing this as a safety.

MR. TORLEY: So you're paving here is concerned not for your commercial use nor for the parking spaces but simply for fire access and prevention?

MR. SHAW: Strictly. Our sole loading area is in the front of the building, that's where the goods come in and out. Access to the office, the display areas, again, is in the front of the building. Any doors that are on the front of the building are just for, you know, fire purposes.

MR. KANE: The paving and the macadam behind the building, is there any parking going to be back there, or is that for loading or unloading or just for access to the building alone?

MR. SHAW: Just for access to the building alone.

MR. TORLEY: Now, at the present, how many, without the new addition, how many parking spaces are you short?

MR. SHAW: Without the new addition, if you look at the zoning schedule, off-street parking prior to lot line change and addition based upon the existing structure we're required to provide 64 spaces. Presently at the site there are seven spaces. So there's an existing deficiency of 57 spaces.

MR. BABCOCK: Mr. Chairman, we also talked in reference to this variance request of what's existing now. Basically, we're calling this whole 9,000 square foot retail space like we would call Shoprite. If he wanted to and reduce that area and bring carpet to that area for you to look at or somebody else to look at and call the rest the warehouse, his parking calculations go from 1 per 150 square feet to 1 per 1,000 square feet. That's what's really hurting because we're considering 9,000 square foot as retail just as you would at Shoprite or any other store.

MR. TORLEY: And in fact the use of this structure is primarily going to be as warehousing space?

MR. SHAW: It's going to be 100 percent warehousing. The way it's set up right now in the existing structure

you have a small office area of 345 square feet and the rest is carpet which is on display, which people can literally walk in, grab a roll, and walk out with it. That's what triggers the retail calcs on the parking spaces. Again, if it was just purely display where you looked at it and you couldn't purchase it such a showroom, then warehouse would kick in and it wouldn't be retail. And as your building inspector said, that's what drives up the numbers so high. But again, to answer your question, that will continue after the new addition in its present fashion and with the 6000 square feet just being purely for warehouse where people would not be able to go into the area and look at carpet which is being stored there.

MR. TORLEY: Are you changing any of the roadcuts?

MR. SHAW: No.

MR. TORLEY: Anybody have any comments?

MR. REIS: Yes. Greg, the signage, you're relocating an existing sign, nothing is changing other than that?

MR. SHAW: That's all that's being changed, correct.

MR. TORLEY: And that existing sign meets the code?

MR. BABCOCK: Yes.

MR. KRIEGER: And it will be the same size, same height, same setback off the road?

MR. SHAW: Right.

MR. REIS: The 10 foot strip beyond the north side of the property line, that 10 foot strip beyond the macadam, that's just plantings?

MR. SHAW: Correct. I believe there has to be a buffer when you put up against a residential zone. If I may just take a step back. I know the Board is very sensitive to residential properties, only because I was involved with the application about five years ago with this piece. This parcel that we're butting up to was zoned commercial, consistent with what the property is of Carpet Mill Outlet. What had happened was an application was submitted to the Planning Board for a senior citizens' project on this property. At that time, the Zoning Ordinance did not allow senior citizen

housing on commercial property, so what they asked for was have it changed over to multi-family residential to allow senior citizen housing. And it was because of that petition that that property got changed from commercial to residential. More than likely, there will be multi-family housing built on that site, maybe even senior citizens. And with respect to what's going to be built in this area, as I explained to the Board, again, having been involved in the piece, this is going to be your storm water collection area. This is the low point of the site. This is the point where the culverts are going to cross under 32 and convey the storm water in an easterly direction. Therefore, there's really not going to anything sensitive on this residential land that's going to be affected by this commercial addition.

MR. TORLEY: Just so I have that cleared up on the record, by this lot line change you would not be creating an insufficient road frontage on the other lot?

MR. SHAW: No.

MR. TORLEY: Gentlemen, any questions at the moment?

MR. KANE: Not at the time.

MR. TORLEY: If not, I'll open it up to the public.

MR. FINTZ: Okay. I'll be brief, and I don't believe I have to read the entire --

MR. KANE: If you would just stated your name again.

MR. FINTZ: My name is Alan Fintz. I'm an attorney in New York. I represent Poly Works. Poly Works' principal Ramon Echevarria, the president, has known Mr. Borden for a number of years. And because of the length of the panhandle on his property from the upland factory to Route 32 and the history of use of the land, he's never found it necessary to formally fence off the boundary of his panhandle. As far as I know, it has not been relied upon for particular zoning criteria. Notwithstanding the fact that Borden's property Carpet Mill is non-complying, I don't believe they have been relying upon the Poly Works strip for any of the compliance they have achieved up to now, and we want to make sure that there is nothing inadvertant or accidental in creating a new reliance upon the

adjoining Poly Works strip of land in granting this application. If you can grant this application on its merits without looking to the Poly Works strip for any of the lot area setback, side yard, fire lane, any other requirements that he must comply with, and you can accept the new non-compliance that they are reaching without the Poly Works land, we're not looking to you to act as the court in a real property sense and force them to buy or pay for the use of that land. We have a right to do that at any time. As Mr. Echevarria's attorney, I can't compel him to play hardball with that. He has chosen to be a nice guy. He has not gone to court forcing them to pay rent for the implicit easement they have over that strip. He hasn't gone to the trouble of putting up a fence, which a spiteful person might do. The one thing he does want to make sure is that his rights and prerogative as to that strip for future use will not implicitly be restricted by any reliance on that land in the granting of this set the variances. If you can rely totally on their land, we will do whatever else we need to do.

MR. KANE: Mr. Fintz, if you will look right here, you'll see in the drawing their property says for a 4 foot setback with now reliances whatsoever on that.

MR. FINTZ: I understand that. To the extent that you people are familiar with the small set of businesses in town, I knew that some of you might have visually associated the remainder of that piece of ground with Carpet Mill because it's contiguous and unrestricted.

MR. KANE: No. Speaking as a Board, we have never relied on anybody else's property in consideration --

MR. KRIEGER: Not only haven't they, they can't.

MR. FINTZ: The only reason this comes up at all is that a few years ago there had been a sign that was sitting on the property line encroaching on Poly Works' land technically, and there had inadvertently or whatever been an application put in years ago by Carpet Mill years ago for that sign which mistakenly measured the distance to lot line to the far side of Poly Works' strip instead of to the actual boundary. So in case anyone had that historical memory tucked away and relied upon that being the edge for any purpose of this approval, we want to make sure that it's up front and that you're not relying on it. Because if it were tucked away in the file, ten years later somebody might

say, Oh, you can't do anything here because we expected this was part of the zoning lot. I've had a number of experiences where municipal error, not my cases thank God. In New York City there was a case of a municipal error involving a condo where the City Planning Commission misread the depth of a certain zoning district, approved the plan to build up to I think 18 stories, and then after the structure was up required them to lop off six stories of structure because they said, Well, it doesn't matter that it's our error, you were supposed check it. So I want to make sure there's no error on your part that we're going to be stuck with. If you can approve this on that basis, then go to the merits of their application.

MR. KANE: Greg, anything to speak towards this?

MR. SHAW: No, I think you said it all. The variances that we're asking for have really nothing to do with the Lands of Poly Works whatsoever. All the construction activities on the north side of the building and, again, the three area variances, that being for parking, that being for front yard setback, and that being for building height, has nothing to do with Poly Works in any fashion whatsoever. The other four variances are existing conditions which we're just to some housecleaning on and the Board will hopefully grant variances and they're not a direct result of any construction activity whatsoever.

MR. KANE: Thank you.

MR. FINTZ: It's just mostly to have the thing in the record so there's no question at a later date.

MR. KANE: Thank you. Anything else from the public?

MR. TORLEY: Hearing no -- I want to keep the public hearing open for a second. Since this is a public hearing, we have to do the SEQRA form.

MR. REIS: Mr. Chairman, in regard to the attorney's comments, I didn't have an opportunity to read his letter, but according to the survey that Greg submitted, there obviously is a small encroachment here on the south side of the property. He understands that that's there and nothing has changed because of that?

MR. FINTZ: Oh, the paved area?

MR. REIS: Right. You understand that that's there and nothing's changed?

MR. TORLEY: And you're not ceding any rights at all?

MR. FINTZ: No, we're not ceding any rights. And he reserves the right and hopes in the future, he does wish to have a secondary access to his properties, to erect fence.

MR. KRIEGER: And the action of the Zoning Board neither adds to nor subtracts from his property rights.

MR. TORLEY: We cannot.

MR. FINTZ: Well, if there were something in the nature of a reliance on an apparent merger of zoning lots between two different pieces of ownership, we could be bound by the zoning lot merger. At least in New York you can have zoning lot mergers that are consisting of several different owned parcels. Ever hear of the case of Rice v. Ritz (ph.)?

MR. TORLEY: I think we're assuring you that by no action of this Board would we nor could we in any way interfere with your rights on your property. We cannot take into account any adjacent properties as far as he can't be granted any bonuses for having encroached on someone else's property.

MR. FINTZ: Okay. And our future use will not be restricted?

MR. TORLEY: Absolutely.

MR. FINTZ: Can I go off the record for one second? I'll try to keep it to 30 seconds.

(An off-the-record discussion was held.)

MR. TORLEY: Back on the record. As I said, we cannot nor would we in any way interfere with your rights to your property.

MR. FINTZ: Thank you.

MR. TORLEY: I wanted to leave the public hearing open for a moment just in case anyone wishes to speak about

the SEQRA environmental assessment impacts. Hearing no one, I'll close the public hearing and we'll take care of the SEQRA form now. Do any of you feel that we need to proceed beyond the short form which I'm going to be passing around?

MR. REIS: No.

MR. McDONALD: No.

MR. KANE: No.

MR. TORLEY: In that case, I will accept a motion that we find a no impact on SEQRA.

MR. KRIEGER: Motion that you declare a neg. dec.

MR. TORLEY: Thank you.

MR. McDONALD: I'll make the motion.

MR. REIS: Second.

ROLL CALL

MR. McDONALD	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

MR. TORLEY: Gentlemen, do you have any other questions?

MR. McDONALD: No.

MR. REIS: Accept a motion?

MR. TORLEY: Do we have enough in the record?

MR. KRIEGER: Yes, there is enough.

MR. TORLEY: Just one quick question again for the record. This was brought up at the preliminary hearing but I want to get it back on now. Part of this property is contained within a designated boundary of a federal wetland, and none of the activities you're proposing for this piece of property are in any way prohibited or impeded by that destination?

MR. SHAW: Correct. The area that we're filing on this

lot is very small, well less than the I believe it's a third of an acre which is allowed under a nationwide permit for filling up the wetlands.

MR. TORLEY: Accept a motion.

MR. REIS: I make a motion that we grant Seymour Borden his requested variances for the Carpet Mill Outlet on Route 32.

MR. McDONALD: Second.

ROLL CALL

MR. McDONALD	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE

PUBLIC NOTICE OF HEARING

ZONING BOARD OF APPEALS

TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

Appeal No. 01-03

Request of Seymour Borden

for a VARIANCE of the Zoning Local Law to Permit:

the construction of a 6,000 SF addition to the building occupied by Carpet Mill Outlet, Warehouse & Showroom. The requested Variances are for a Lot Width of 35 Ft., Lot Area of 6,546 SF, Front Yard Setback of 18 Ft., One Side Yard Setback of 26 Ft., Both Side Yard Setback of 36 Ft., Building Height of 18 Ft., and 59 Parking Spaces being a VARIANCE of Section 48-12, Table Of Bulk Regulations Columns C, D, E, F, I, O

for property situated as follows:

294 Windsor Highway

known and designated as tax map Section 35, Blk. 1 Lot 54.1 & Portion Of 53.21

PUBLIC HEARING will take place on the 26 day of March, 2001 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York beginning at 7:30 o'clock P.M.

James Nugent

Chairman

PROJECT I.D. NUMBER

617.21

SEQR

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

PART I—PROJECT INFORMATION (To be completed by Applicant or Project sponsor)

1. APPLICANT /SPONSOR Terry Seymour Borden	2. PROJECT NAME New Building Addition For Carpet Mill Outlet, Warehouse & Showroom
3. PROJECT LOCATION: Municipality Town Of New Windsor County Orange	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) 294 Windsor Highway	
5. IS PROPOSED ACTION: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: the construction of a 6,000 SF addition to the building occupied by Carpet Mill Outlet, Warehouse & Showroom	
7. AMOUNT OF LAND AFFECTED: Initially 0.77 acres Ultimately 0.77 acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open space <input type="checkbox"/> Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency(s) and permit/approvals New Windsor Planning Board	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list agency name and permit/approval	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE	
Applicant/sponsor name: Seymour Borden Date: March 2, 2001	
Signature: _____	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER

PART II—ENVIRONMENTAL ASSESSMENT (To be completed by Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.12? If yes, coordinate the review process and use the FULL EAF.
☐ Yes ☒ No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.
☐ Yes ☒ No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:
No

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:
No

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:
No

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:
No

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly.
No

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly.
No

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly.
No

D. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
☐ Yes ☒ No If Yes, explain briefly

PART III—DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed.

☐ Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

☐ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide on attachments as necessary, the reasons supporting this determination:

_____ Town Of New Windsor Zoning Board Of Appeals
Name of Lead Agency

James Nugent
_____ Chairman
Print or Type Name of Responsible Officer in Lead Agency Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Designer (if different from responsible officer)

Date

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

01-03

Date: 12/13/01

I. ✓ Applicant Information:

- (a) Seymour Borden, 84 Sycamore Dr., Middletown, NY 10940 342-3091
(Name, address and phone of Applicant) (Owner)
- (b) _____
(Name, address and phone of purchaser or lessee)
- (c) _____
(Name, address and phone of attorney)
- (d) Gregory J. Shaw, P.E., 744 Broadway, Newburgh, NY 12550 565-7865
(Name, address and phone of contractor/engineer/architect)

II. Application type:

- ☐ Use Variance ☐ Sign Variance
- ☒ Area Variance ☐ Interpretation

III. ✓ Property Information:

- (a) C 294 Windsor Highway Portion Of S35, B1, L54.1 & S35, B1, L53.21
(Zone) (Address) (S B L) (Lot size) 433,454 SF
- (b) What other zones lie within 500 ft.? R-5 PI
- (c) Is a pending sale or lease subject to ZBA approval of this application? No
- (d) When was property purchased by present owner? 1985
- (e) Has property been subdivided previously? No
- (f) Has property been subject of variance previously? No
If so, when? _____
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning Inspector? No
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: No
- _____

IV. Use Variance. PI

- (a) Use Variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____, to allow:
(Describe proposal) _____
- _____

(b) The legal standard for a "use" variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.

(c) Applicant must fill out and file a Short Environmental Assessment Form (SEQR) with this application.

(d) The property in question is located in or within 500 ft. of a County Agricultural District: Yes _____ No X.

If the answer is Yes, an agricultural data statement must be submitted along with the application as well as the names of all property owners within the Agricultural District referred to. You may request this list from the Assessor's Office.

✓ V. Area variance:

(a) Area variance requested from New Windsor Zoning Local Law, Section 48-12, Table of Use/Bulk Regs., Col. C, D, E, F, I & O

<u>Requirements</u>		<u>Proposed or Available</u>	<u>Variance Request</u>
Min. Lot Area	40,000 SF	33,454 SF	6,546 SF
Min. Lot Width	200 Ft.	165 Ft.	35 Ft.
Reqd. Front Yd.	60 Ft.	42 Ft.	18 Ft.
One Reqd. Side Yd.	30 Ft.	4 Ft.	26 Ft.
Both Reqd. Side Yard	70 Ft.	34 Ft.	36 Ft.
Reqd. Rear Yd.	30 Ft.	34 Ft.	
Reqd. Street Frontage*	N/A	165 Ft.	
Max. Bldg. Hgt.	4 Ft.	22 Ft.	18 Ft.
Min. Floor Area*	N/A	N/A	
Dev. Coverage*	N/A %	N/A %	%
Floor Area Ratio**	0.5	0.47	
Parking Area	70 Spaces	11 Spaces	59 Spaces

* Residential Districts only

** No-residential districts only

✓ (b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3)

whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created. Describe why you believe the ZBA should grant your application for an area variance:

See Attached Narrative

(You may attach additional paperwork if more space is needed)

VI. Sign Variance: N/A

(a) Variance requested from New Windsor Zoning Local Law, Section _____, _____ Regs.

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign 1	_____	_____	_____
Sign ..	_____	_____	_____
Sign 3	_____	_____	_____
Sign	_____	_____	_____
	_____	_____	_____

(b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or over size signs.

(c) What is total area in square feet of all signs on premises including signs on windows, face of building, and free-standing signs?

VII. Interpretation: N/A

(a) Interpretation requested of New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

(b) Describe in detail the proposal before the Board:

VIII. Additional comments:

(a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or

upgraded and that the intent and spirit of the New Windsor Zoning is fostered. (Trees, landscaping, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)

See Attached Site Plan

IX. Attachments required:

- ☒ Copy of referral from Bldg./Zoning Insp. or Planning Bd.
- ☒ Copy of tax map showing adjacent properties.
- ☒ Copy of contract of sale, lease or franchise agreement.
- ☒ Copy of deed and title policy.
- ☒ Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
- ☒ Copy(ies) of sign(s) with dimensions and location.
- ☒ Two (2) checks, one in the amount of \$150.00 and the second check in the amount of \$500.00, each payable to the TOWN OF NEW WINDSOR.
- ☒ Photographs of existing premises from several angles.

X. Affidavit.

Date: 3/8/01

STATE OF NEW YORK)
)-SS.:
COUNTY OF ORANGE)

The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/or information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

[Signature]
(Applicant)

Sworn to before me this

8 day of March, 2001.

[Signature]

BRENDA L. BENNETT
Lic. #01BE5075436
Notary Public, State of New York
Qualified in Ulster County
My Commission Expires 03/31/01

XI. ZBA Action:

(a) Public Hearing date: _____

**Applicant: Seymour Borden
(Carpet Mill Outlet, Warehouse & Showroom)**

Seymour Borden, owner of Carpet Mill Outlet, Warehouse and Showroom, owns a 22,596 SF parcel of land located on the west side of Windsor Highway. The subject parcel is within the Design Shopping (C) Zoning District. Mr. Borden presently has a Lot Line Change Application before the New Windsor Planning Board to re-align 10,858 SF of property from the Lands of Kaufman, north of Carpet Mill Outlet, with his property. Upon adding this land to his existing parcel, his new parcel size will be 33,454 SF.

Upon Lot Line Change Approval and obtaining ownership of the 10,858 SF parcel, Mr. Borden proposes to construct a 6,000 SF addition on the north side of Carpet Mill Outlet. This addition will be solely for warehouse use, while the existing building will continue to be used for office and retail/display. All of these uses are permitted within the Design Shopping Zone. Associated site improvements will consist of 4 additional parking spaces on the east side of the new addition, and a fire lane on the north side of the new addition.

The construction of this new addition will require 3 Area Variances where the degree of non-conformance will increase from existing conditions. These Variances are for Min. Front Yard Depth, Max. Building Height, and Min. Off-Street Parking. To correct existing non-conforming conditions that will not increase from existing conditions, additional Area Variances are also being requested for Min. Lot Area, Min. Lot Width, Req'd Side Yard, and Total Both Side Yards.

The common thread that runs through all of the 7 requested Area Variances is the fact that this parcel was created, and the existing building was built in excess of 30 years ago when the Town of New Windsor Zoning Ordinance was less stringent. It can be safely stated that at the time when the building was built and site improvements were constructed, they both met the zoning regulations of the Town of New Windsor. Today under the revised zoning regulations, both the lot and the placement of the building on the lot are deficient. It must again be noted that these deficiencies presently exist and are not caused by the Lot Line Change or the construction of the new addition. In fact with the approval of the Lot Line Change, the lot will be increased in area and width, and thus become more conforming.

Regarding the Variance for Req'd Front Yard Depth, the existing building has a depth of 47 feet, 13 feet less than the 60 feet required by the Zoning Ordinance. For aesthetic reasons, the front face (easterly) of the new addition will be in line with the front face existing building. Unfortunately, the front face of the existing building and new addition are not parallel with easterly property line, and this reduces the Req'd Front Yard Depth for the new addition. At the most northerly point of the front face of the new addition, the Req'd Front Yard Depth is only 42 feet. While this is only 5 feet less than the present Front Yard Depth, an Area Variance of 18 feet is being requested for the deficiency from the 60 feet required by current zoning.

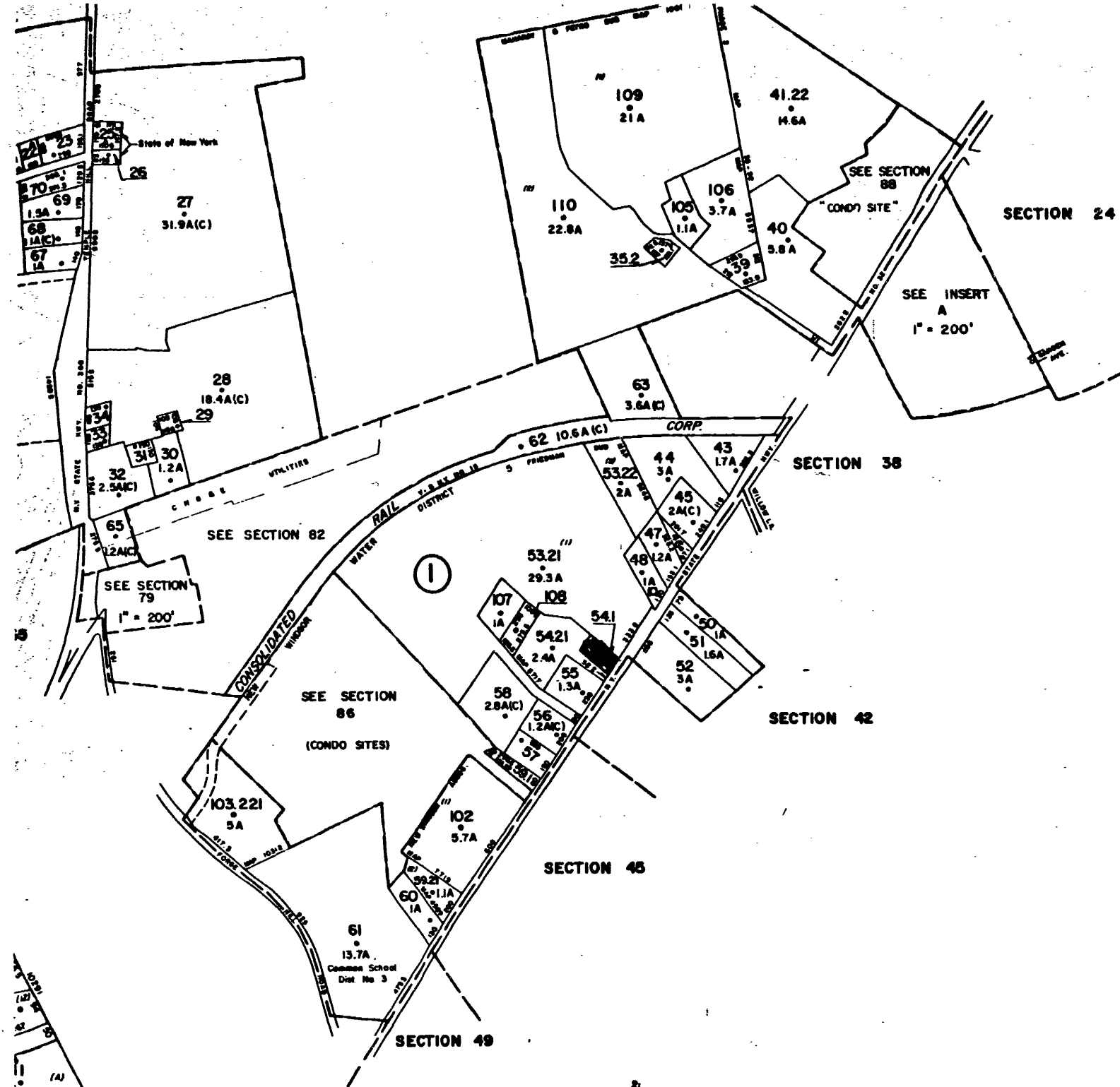
New Windsor's Zoning Ordinance limits the Max. Building Height of a structure in the Design Shopping Zone to 12 inches for every foot of distance from the nearest lot line. As the existing building is only 4 feet from the south lot line, the maximum building height permitted by zoning is 4 feet. The existing building height of Carpet Mill Outlet is 18 feet, and this is considered to be a non-conforming condition. The new warehouse addition will be 22 feet in height. While this is only a 4 feet increase above the existing building height, an Area Variance of 18 feet is being requested for exceeding the 4 feet building height limitation. The reason for this increase in building height to 22 feet is that an 18 foot high addition is insufficient to stack 15 foot long rolls of carpet in an upright position. It must be noted that the nearest lot line to the new addition is 30 feet, thus allowing a building height of 30 feet had the existing building been built in conformance with the current zoning.

The existing building is 9,400 SF in size of which 345 SF is used as office space, and 9,055 SF is used as retail/display space. For these uses, New Windsor' Zoning requires a total of 64 spaces for Off-Street Parking. Presently at the site there are 7 parking spaces. While the new addition will require 6 additional spaces, the new site layout will provide only 4 additional spaces, thus creating an additional deficiency of 2 parking spaces. Consistent with the other requested variances, this requested Off-Street Parking Variance will be for 59 spaces (a total of 70 spaces required by zoning less the 11 spaces provided after construction) rather than the 2 spaces (6 spaces required by the new addition less the 4 new spaces to be added during construction of the new addition).

As presented above, the construction of this new addition will require 3 Area Variances where the degree of non-conformance will increase from existing conditions. Using the existing non-conforming conditions as a baseline, the increase in deficiency for Req'd Front Yard Depth is 5 feet, for Max. Building Height is 4 feet, and for Min. Off-Street Parking is 2 spaces.

The granting of the 3 Variances is not substantial when considering that they are due to the stringent revisions to New Windsor's Zoning Ordinance since the creation of the Carpet Mill Outlet lot, and the construction of its building. The granting of all of the Variances is not detrimental to the health, safety, or welfare of the neighborhood since the property is located in the Design Shopping Zone, and is a permitted use. The granting of the Variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district. The granting of the Variance will not produce an undesirable change in the neighborhood or be a detriment to adjoining properties

There is no other method that the Mr. Borden can feasibly pursue other than the Variances sought in this Application. In view of all the facts and circumstances presented to this Board, the Applicant respectfully requests that the Variances sought be granted.



ALL NEWBURGH SCHOOL DISTRICT.
ALL VAILS GATE FIRE DISTRICT.

46

ORANGE COUNTY-NEW YORK

TOWN OF NEW WINDSOR

Photo No. 8-497,498

Date of Map: 9-24-67

Date of Photo: 3-1-65

Date of Revision: 3-1-92

Section No. 35

Scale: 1" = 400'

NY STATE HWY NO 17
COUNTY HWY NO 4
TOWN NO 1

ALAN S. FINTZ
Attorney at Law

26 Court Street
Suite 2003
Brooklyn, NY 11242
Tel (718) 852-2400
Fax (718) 852-4386

1271 East 32nd Street
Brooklyn, NY 11210-4742
Tel (718) 253-0462
Fax (718) 253-1252

August 20, 1998

Via Mail & Facsimile:
(516) 563-4693

Mr. Michael L. Babcock
Office of the Building Inspector
Town Hall - 555 Union Avenue
New Windsor, New York 12550

Re	:	Possible Zoning and Boundary Encroachment Matters		
Affecting	:	Poly Works, Inc.	Sec. 35	Blk. 1
		110 Corporate Drive		Lot. 54.21
		[a/k/a 302 Windsor Hwy.]		
		New Windsor, NY 12553		
		Carpet Mill Outlet	Sec. 35	Blk. 1
		294 Windsor Hwy		Lot. 54.1
		<u>New Windsor, NY 12553</u>		

Dear Mr. Babcock:

This is further to my telephone to your office on the 19th. (Before I go on: Your office mentioned your recent loss, and I extend my condolences.)

As you may recall, I had the pleasure of speaking with you on behalf of my client, Poly Works, Inc., regarding a site plan submission to your office, several years ago.

I write to you today on a separate matter, in the hope of resolving long-standing concerns of Poly Works as to certain signage along its Windsor Highway frontage adjoining the Carpet Mill Outlet.

Mr. Michael L. Babcock
Office of the Building Inspector
August 20, 1998

Page Two

Background

Please find enclosed, a reduced copy of the pertinent survey segment, for reference. You may already be aware that, while the main portion of Poly Works' site is uphill from Route 32, along Corporate Drive, its Lot, 54.21, extends along a gore or "panhandle" of land, to a Route 32 frontage abutting the Carpet Mill Outlet parcel to the South.

In the course of preparation for Poly Works' 1993 application to your office, its President, Mr. Echevarria, informed me of the encroachment of Carpet Mill's illuminated sign, and additionally, of portions of its paved Southerly access drive, over the Northerly line of Poly Works' land. However, given the generally neighborly relationship between Mr. Echevarria and Mr. Borden of Carpet Mill, and the absence of a direct and immediate interference of this sign with Poly Works' operation at that time, Poly Works -extended the courtesy of grace, and forbearance from strict enforcement over the past several years -- without waiving or relinquishing its rights as to this encroachment.

In connection with preparation of architectural plans for Poly Works' more recent application to your office, Mr. Echevarria reviewed these encroachments again. In particular, Mr. Echevarria and his architect did not find it necessary at this time, to improve its Route 32 panhandle as an alternate accessway to Poly Works' site, he did determine that this is an option he may wish to explore or pursue over the next few years.

In this regard, he has requested that I research the status of Carpet Mill's encroaching sign and drive uses, from the standpoint of both title encroachment and zoning criteria. My client has also asked me to explore appropriate steps to rectify the situation -- amicably, if at all possible, or through legal recourse, if necessary.

Survey Encroachment

As the enclosed survey excerpt indicates, the Northwesterly corner of the Carpet Mill sign, appears to intercept the Northeasterly lot line, along Poly Works' panhandle, and the concrete footing of the sign structure appears to extend several feet onto Poly Works' land, at an undetermined depth below grade. This encroachment appears to pose a title issue, irrespective of any related New Windsor Zoning rules.

Inconsistencies in Sign Application

On August 3rd, I paid a visit to Town Hall (because I'd neglected to call ahead for an appointment, I missed the opportunity to discuss this matter with you directly.

Mr. Michael L. Babcock
Office of the Building Inspector
August 20, 1998

Page Three

During my visit, I submitted a Records Request form for Carpet Mill's original application to construct their free-standing sign [copies of portions are enclosed for your reference].

If I read these papers correctly -- in particular,

- the Large Area Diagram showing the proposed sign in relation to adjoining zoning lots; and
- the rough Plot Plan as sketched onto the Town of New Windsor Application for Building Permit form;

Carpet Mill's sign application was submitted in 1985, and apparently approved, on the premise that it set back **twenty (20) feet** [according to their Plot Plan], or **twenty eight (28) feet** [according to their Large Area Diagram] **from their lot line with Poly Works.**

As indicated above, the sign "as built" has no setback whatsoever from Poly Works' parcel, and in fact extends over the common lot line. This fact is confirmed not only by Poly Works' survey, but by a portion of an "as built" site survey included in a 1992 submission to your office, by Carpet Mill itself (also enclosed).

Given these facts, Carpet Mill's original approval to construct, and its later certificate of occupancy, appear to be invalid, in that the Affidavit of Final Cost of Construction and Application for Certificate of Occupancy, [under Permit No. 2957, and Affidavit No. 92-711], contains a misstatement of material fact, in claiming that :

"... Applicant ... has examined the approved plans ...
[stipulating a setback of 20 - 28 ft.] ... and that to the best of his knowledge and belief, the structure has been erected in accordance therewith and in accordance with the applicable provisions of law."

[insert in italics]

Possibly in reliance on the incorrect statements in Applicant's Affidavit, the Building Inspector's Certificate of Occupancy, may be in error, in stating that:

"... the structure described herein conforms substantially to the approved plans and specifications heretofore filed in this office with the Application for Building Permit dated: 9/13/85."

Mr. Michael L. Babcock
Office of the Building Inspector
August 20, 1998

Page Four

The related letter of August 25, 1992 forwarding Cert. [No. 321], is correct on its face, in stating that:

“... there are no building or zoning violations against said structure *on file in this office at the present time.*” [emphasis added]

But the facts outlined above suggest that the material inaccuracies in Applicant's Affidavit, and the material variance between the approved plans and this sign as completed, would be the basis for the posting of a violation at this time.

Applicable Sign Regulations

Aside from the above-cited issues -- as to survey encroachment, and construction inconsistent with approved plans -- the Carpet Mill sign appears directly to violate provisions of New Windsor Code (“Code”).

According to the Code, all structures (including Freestanding Signs in Nonresidential Zoning Districts), must be set back from adjoining lot lines by a minimum distance.

Carpet Mill appears also to violate other general and procedural Code sections:

1. Under the Supplemental Sign Regulations at Code § 48-18 *et seq.*, signs may not be erected except in accordance with law, and pursuant to a valid permit application. [§ 48-18A and B]

2. Applications for Freestanding Signs are to include, *inter alia*,

“a site plan showing approximate *sign locations and setbacks ... and details of the post and base assembly.*” [§ 48-18B(2)(b)]
[Emphasis added.]

In this regard, Carpet Mill's filing of plans showing large setbacks, materially at variance with the absent setback as built, and plans omitting any reference to the encroachment of post and base upon the land of others, both place their sign in violation of the permit application provisions of § 48-18;

3. Although a permit was in fact issued to Carpet Mill based upon an apparently-false Affidavit, the Code makes clear that:

“No permit... shall be deemed to constitute permission or authorization to maintain an unlawful sign. [§ 48-18C(2)]

4. The Code provisions permitting Accessory Freestanding Signs in Nonresidential Zoning Districts, bar, *inter alia*, signs that may
"pose a hazard or *be a nuisance*;" [§ 48-18H(1)(a)[1];
and the "nuisance" standard would clearly be triggered by a sign whose post and base both encroach on and underlie other property;
5. Although the outlet of Poly Works' "panhandle" onto Route 32, has not yet been improved as an additional access drive to the parcel, Carpet Mill's encroaching sign unavoidably narrows the width of this access point, and may in the future pose a problem under standards of the NYS Uniform Fire Prevention Code ("UFPA"), cited at the New Windsor Code [§ 48-18N(1)]
(Further review of the UFPA may be required to confirm this;)
6. To the extent that re-grading or repaving by Poly Works could force removal of the existing concrete foundation supporting the Carpet Mill sign, this foundation should be deemed non-complying with the "foundation" provisions of the Code. [§ 48-18O];
7. Unlawful signs are generally prohibited. [§ 48-18Q(4)];
Accordingly, the Carpet Mill sign should be noticed for violation and correction within thirty (30) days: [§ 48-18R(2)].

Setback Regulations Applicable to Carpet Mill Building

To the best of our information, the mere 4.5-foot setback between the Southerly wall of the Carpet Mill building, and the Northerly boundary of the Poly Works panhandle, is less than required by the Code. (Most of the apparent setback area in this vicinity is actually part of the Poly Works property.)

As discussed earlier, Poly Works may wish, and reserves the right, to make more active use of this portion of its property. In this regard, in advance of any firm plan to fence off its property in this vicinity, Poly Works presumes -- and would much appreciate confirmation by your office -- that no part of this strip of land has been mistakenly incorporated (by Carpet Mill, the Building Inspector, or others) into minimum setback or other calculations as to compliance of the Carpet Mill property, with the Code.

Mr. Michael L. Babcock
Office of the Building Inspector
August 20, 1998

Page Six

Summary

The above overview is of course, preliminary. Given your greater familiarity with the New Windsor Town Code and other applicable standards, we would appreciate any corrections, observations or other guidance you may offer as to the correct application of these or other portions of the Code, before I recommend any further remedial steps to my client.

I would much appreciate your contacting me at your earliest convenience, once you have had an opportunity to review this matter, and I thank you in advance for your kind attention.

Very truly yours,

Alan S. Fintz

Enclosures

cc: Mr. Ramon Echevarria, Pres.
Poly Works, Inc.

ALAN S. FINTZ
Attorney at Law

26 Court Street
Suite 2003
Brooklyn, NY 11242
Tel (718) 852-2400
Fax (718) 852-4386

1271 East 32nd Street
Brooklyn, NY 11210-4742
Tel (718) 253-0462
Fax (718) 253-1252

March 25, 2001

Via Mail & Facsimile:
(516) 563-4693

Mr. Michael L. Babcock
Office of the Building Inspector
Town Hall - 555 Union Avenue
New Windsor, New York 12550

Re : **Possible Zoning and Boundary Encroachment Matters**
Arising in Connection with Hearing
Scheduled for **March 26, 2001** *APP# 01-03*

In Pending Zoning Application of
Carpet Mill Outlet Sec. 35 Blk. 1 Lot. 54.1
294 Windsor Hwy
New Windsor, NY 12553

Affecting : **Poly Works, Inc.** Sec. 35 Blk. 1 Lot. 54.21
110 Corporate Drive
[a/k/a 302 Windsor Hwy.]
New Windsor, NY 12553

Dear Mr. Babcock:

This letter is respectfully submitted in anticipation of the captioned Hearing scheduled for Monday, March 26, 2001, and in summary of the position that **Poly Works, Inc.,** a client of my office, hopes will be included in the Hearing Record, and duly considered in the course of the Board's deliberations on Pending Zoning Application of **Carpet Mill Outlet.**¹

Background

As you may recall, my office had the pleasure of communicating with you with regard to two other matters relating to Poly Works, over the past decade – first, in Fall 1993, as to site plan approval for the exterior concrete pad required for installation of their catalytic oxidizer air quality control equipment; and later, in August 1998, concerning long-standing concerns of Poly Works as to certain signage along its Route 32 frontage, adjoining the Carpet Mill Outlet.

¹ At this writing, the radio reports likely snow for the Hearing date. While I hope and expect to travel Upstate in any event, I respectfully request that this letter be included in the record and considered, in the event road conditions impede or delay my appearance on Poly Works' behalf.

At the outset, accept the thanks of Poly Works and myself, for the cooperation and assistance extended by you and the Town of New Windsor in our past dealings with your office.

This letter is submitted partly in reference to matters addressed in my Letter on Poly Works behalf, dated August 20, 1998 [a copy of which is annexed hereto for your convenience].

We also reference those plans and letters comprising the Zoning Application of Carpet Mill Outlet, scheduled to be considered on 3/26/01.

As you may recall, the main portion of Poly Works' site is uphill from Route 32, along Corporate Drive, and its Lot, 54.21, extends along a gore or "panhandle" of land, to a Route 32 frontage abutting the Carpet Mill Outlet parcel to the South.

In the course of preparation for Poly Works' 1993 Site Plan Application to your office, its President, Mr. Echevarria, had informed me of the encroachment of Carpet Mill's illuminated sign, and additionally, of portions of its paved Southerly access drive, over the Northerly line of Poly Works' land in the vicinity of this panhandle. Notwithstanding the generally neighborly relationship between Mr. Echevarria and [at that time,] a Mr. Borden of Carpet Mill, and the absence of a direct and immediate obstruction of this sign with Poly Works' operation at that time, Poly Works communicated with The Town of New Windsor in August 1998, to seek enforcement of its property rights as to the area of this encroachment.

In particular, I believe our Letter and Zoning Memo outlined respects in which the Carpet Mill sign constituted both a title encroachment and violation of various specific provisions of the Sign Regulations and Zoning Code of The Town of New Windsor (the "Code").

Again, we acknowledge here and appreciate that in the months following our 1998 Letter and Memo, your office assisted in securing Carpet Mill's abatement of this sign encroachment, leading shortly thereafter to their removal and relocation of this sign and its support and footing, to a more Northerly portion of Carpet Mill's lot.

Current Application of Carpet Mill

To the best of our information -- both in 1998 and at present -- the mere 4.5-foot setback (*and/or*, required side-yard) between the Southerly wall of the Carpet Mill building, and the Northerly boundary of the Poly Works panhandle, was *and remains* less than required by the Code. *I.e.*, Most of the *apparent* setback area in this vicinity being part of Poly Works property.

In particular, no portion of this Poly Works property has at any time been subject to any lawful deed, lease, easement, license, estate for years or any other estate or title by or for the benefit of Carpet Mill or any of its principals. Rather, Carpet Mill's occasional physical traversal of this undeveloped strip of Poly Works has been and remains exclusively in the nature of an encroachment at Poly Works sufferance, and revocable in Poly Works sole and unfettered discretion at any time.

Mr. Michael L. Babcock
Office of the Building Inspector
March 25, 2001

Page Three

As discussed at length in our 1998 submission to your office, Poly Works may wish, and reserves the right, to make more active use of this portion of its property. (Indeed, such a proposal for more active use of this strip toward Route 32, is more likely to emerge following Poly Works recent expansion at the Northwesterly portion of its own facilities).

Accordingly, in advance of any firm plan by Poly Works to fence-off, pave or otherwise improve its property in this vicinity, Poly Works respectfully seeks further confirmation by The Town of New Windsor -- in the context of Carpet Mill's pending Zoning Application -- that no part of Poly Works' strip of land has been, or will be, mistakenly or improperly incorporated into, or counted toward, any minimum setback, side yard, lot coverage, or other calculations as to compliance with the Code, of the Carpet Mill property -- *whether as currently configured, or as it is proposed to be altered* in connection with the new wing proposed in its current Zoning Application.

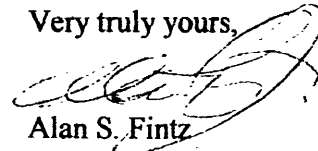
Conclusion

To summarize: insofar as the Town and the Zoning Board can confirm in the text of any resolution approving Carpet Mill's current Application, that Carpet Mill's *current* technical non-compliance with any Code requirements -- and any *further* non-compliance that may result from construction of Carpet Mill's proposed addition -- will be acceptable to the Town and the Zoning Board *without any reference to or reliance upon Poly Works land, and without in any way restricting or impeding Poly Works prospective lawful fencing, segregation, development and use of its land* -- then in such event, Poly Works will waive any further objection to Carpet Mill's Application.

However, to the extent the Town and the Zoning Board cannot preclude in express written terms, *any* reliance on or restriction of the Poly Work's parcel adjoining Carpet Mill, as a result of or in connection with Carpet Mill's current proposal, then in such event and to such extent, Poly Works' must respectfully and unequivocally oppose Carpet Mill's application, and would therefore seek denial of their Zoning Application, for all of the reasons discussed herein.

Please note Poly Works' position in the record of Monday's hearing. In the interim, please feel free to contact me at your earliest convenience, with any comments or further information regarding this matter, and accept our thanks in advance for your kind attention.

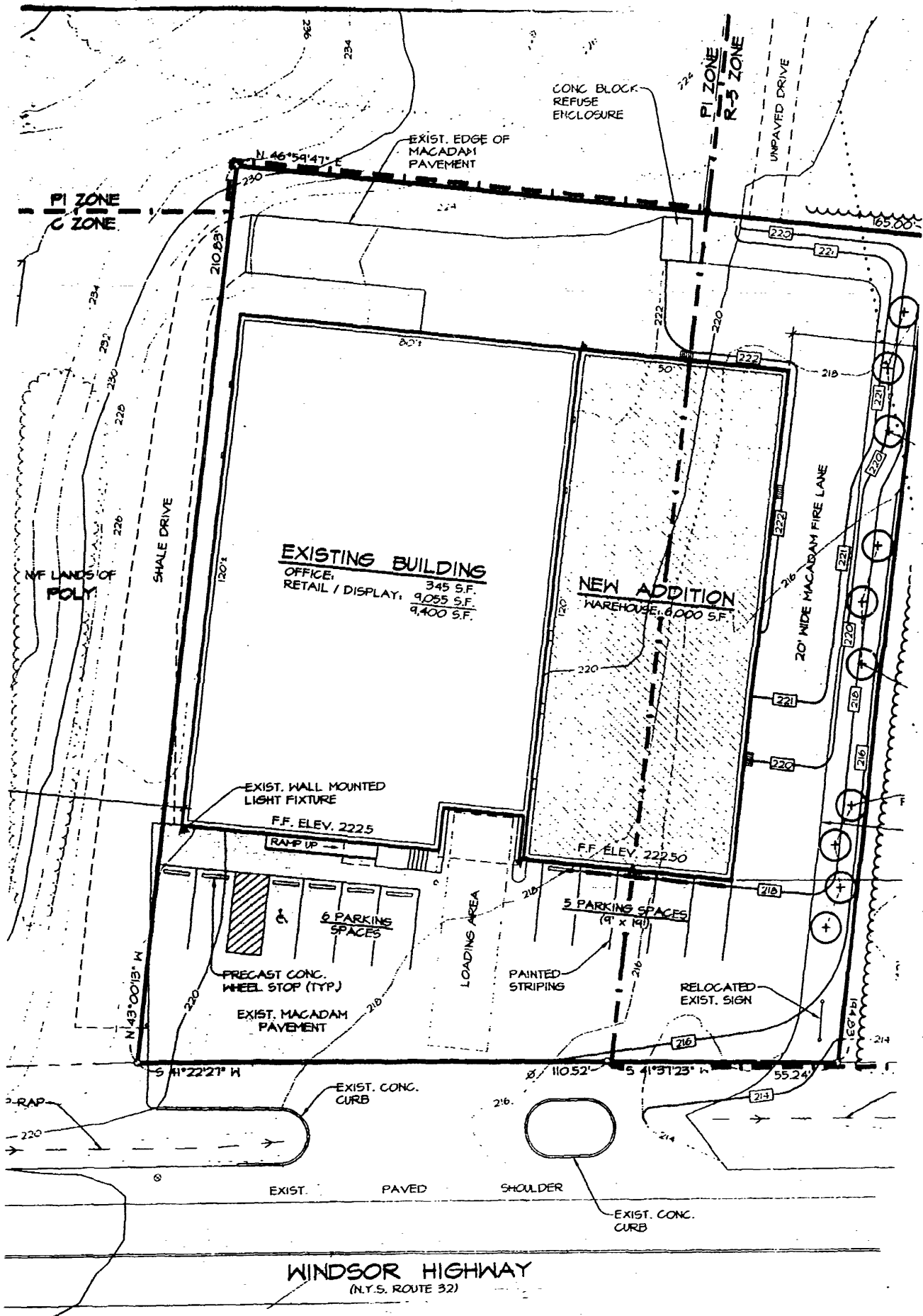
Very truly yours,



Alan S. Fintz

Enclosures

cc: Mr. Ramon Echevarria, Pres.
Poly Works, Inc.



3/26/01 Public Hearing - Borden, Seymour #01-03

Name:

Address:

ARON R PINTZ

26 COURT ST

BROOKLYN NY

11242

(718) 852-2800

**ZONING BOARD OF APPEALS:TOWN OF NEW WINDSOR
COUNTY OF ORANGE:STATE OF NEW YORK**

In the Matter of the Application for Variance of

**AFFIDAVIT OF
SERVICE
BY MAIL**

Seymour Borden
01-03.

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

PATRICIA A. CORSETTI, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age and reside at 7 Franklin Avenue, New Windsor, N. Y. 12553.

That on the 13th day of March, 2001, I compared the 35 addressed envelopes containing the Public Hearing Notice pertinent to this case with the certified list provided by the Assessor regarding the above application for a variance and I find that the addresses are identical to the list received. I then caused the envelopes to be deposited in a U.S. Depository within the Town of New Windsor.

Patricia A. Corsetti.
Notary Public

Sworn to before me this

____ day of _____, 20____.

Notary Public

DATE		CLAIMED	ALLOWED
1/26/01	Zoning Board Mtg	75.00	
	Mis. 1		
	Cocchia - 3		
	Betcha - 6		
	Borden - 9 40.50.		
	Cutro - 4	103.50	
	<u>83</u>		
		178.50	

BORDEN, SEYMOUR

Mr. Gregory Shaw of Shaw Engineering appeared before the board for this proposal.

MR. NUGENT: Referred by Planning Board for 18 ft. front yard, 18 ft. maximum building height and 59 parking space variance for Carpet Mill Outlet located on Windsor Highway in a C zone.

MR. SHAW: Thank you. As the Chairman said, I'm representing Seymour and Terry Borden tonight regarding their property on Windsor Highway. Presently, it's being utilized as a business of Carpet Mill Outlet Warehouse and Showroom. What they're proposing to do is to buy a 55 foot strip of land from the parcel immediately to the north of them owned by a Mr. Kaufman and incorporate it into their piece of land, which is just approximately a little over half an acre and then what they propose doing now with this aggregate parcel is to build a 6,000 square foot addition which is going to be 50 feet wide and 120 feet long. So, for openers, we're going to need some variances, okay, and the first three are very clear, we're going to need a parking variance as we're required by your zoning ordinance to provide 70 and we'll be providing 11. Presently, there are seven spaces on the site. We're also going to need a building height variance, we're allowed to build a total of 4 feet high based upon the side yard setback, presently the building's 18 feet, we're going to be going 22 feet, so we're going to need a building height variance for the difference between 22 and 4 feet, which is 18 feet. And lastly, we're going to need a minimum front yard setback, we're required to provide 60 feet, we'll be providing 42 feet. Therefore, we need 18 feet for a variance. So, those are the three minimum variances we need. There are other issues on the table that I noted on this plan that's going to be at this board's discretion as to whether or not you view them as requiring a variance. In general, this is a relatively small lot, it was subdivided years ago, it's half an acre, your zoning ordinance requires a minimum over 40,000 square feet. While we're making the lot bigger by adding this parcel to it, this 55 foot strip we're now increasing it from 22,000 square

feet and change to 33,000 square feet and change, we're still deficient when it comes to your 40, so you could view it as a non-conforming condition or you very well may say while you're here getting variances, why don't you get a variance for that condition. And there's about five other conditions that follow it just as we're deficient with respect to lot area, again, a non-conforming condition, all right, we're deficient with respect to lot width. Right now, we have 110, after the additional parcel will be 165. Your zoning ordinance requires 200, we need a variance for that. Same thing with minimum side yard, we're required to provide 30. Presently, there's four, there will be four when we're done that will be dictated by the south property line, maybe we need a variance for that. Same thing for both side yards, we're required to provide 70, presently, there's 28, we're going to increase it to 34 but we're still short of the 70. So, making a long story short, we'll be coming before you for three variances, it's the board's determination whether you want the other areas to go on the variance application or whether you want to treat them as a pre-existing non-conforming condition.

MR. TORLEY: Question on the fact that you're buying an R-5 zone piece of property and splicing it onto a commercial use?

MR. SHAW: Correct.

MR. TORLEY: Looking at the code section you can refer to here 48-6 D talking about where a district boundary divides a lot into one and another ownership and 50% lies in a less restricted district regulations prescribed by this local law, and the rest of you follow along in your books, what worries me about this you've got right now it's not that you have an existing piece of property that somehow got cut by zoning code, we have a perfectly valid piece, it's an R-5, you're just going to buy that and claim 30 feet of it as commercial.

MR. SHAW: I understand what you're saying. Would it make more sense if my client bought the piece of property through a lot line change incorporated into

his piece and then came before the board? That very well maybe closer to what you're referring to but my client really doesn't want to buy a 55 foot strip of land if he can't utilize it for the purpose on which he's buying it?

MR. TORLEY: Well, the other part of this paragraph requires that you only get 30 feet no matter how big the parcel is you only get 30 feet into the R-5 zone.

MR. SHAW: Correct and we're sending the building 25 feet.

MR. TORLEY: And the parking and all aspects of the commercial structure extends the whole width.

MR. SHAW: Well, we'd have to go back and look at the definition of terms if that's where you're going.

MR. TORLEY: If you have, in the past, we've had this kind of maybe have a little bit of overlap here, you're taking 30 feet of the building and filling the rest in as a parking lot and you couldn't make a parking lot if it was an R-5 zone.

MR. SHAW: He's not making the rest a parking lot, he's providing a fire lane and from my client's point of view, we can get rid of the fire lane, but I don't think that would make Mr. Rogers very happy either.

MR. NUGENT: Isn't a commercial line 200 feet from the center of the road?

MR. BABCOCK: Quite honestly, I don't have a map with me.

MR. NUGENT: I know it was on 94 when we went through that Windsor Counseling deal.

MR. BABCOCK: Typically, down 32 it does run, if you look on the back side of the map, you'll see the C and the PI and apparently, it ends at that point.

MR. SHAW: Well, no, what happens is it runs 200 feet until it hits this zone change line, but there's also a

paragraph in your zoning ordinance that says when a zoning district is within 15 feet of a property line, you can assume that it follows a configuration of the property line, that's why on that map it has that jog around the boundary of Carpet Mills' property.

MR. NUGENT: When they built the antique center right down the road, we went round and round about being 200 feet off the road or whatever the given number was, I think it was 200 feet because that property was partially in commercial and partially in R-5.

MR. BABCOCK: That's correct.

MR. NUGENT: If you took just, bear with me, if you took 200 feet from the road and went to the back of the property, where would you be?

MR. BABCOCK: Almost a hundred percent in the C zone.

MR. SHAW: Correct.

MR. NUGENT: That's why I argue that.

MR. TORLEY: Well, I'm looking at what he's drawn as the map.

MR. NUGENT: I understand that but the whole area particularly down in there was all--

MR. TORLEY: I have no problem.

MR. NUGENT: --was all PI.

MR. SHAW: I think that the identical condition happened with Gallagher Trucking because that I was for the applicant for Gallagher Trucking and Petro Metals which you're referring to, so that's, that was twice the case.

MR. TORLEY: If it really is 200 feet back at that point, then we've got no problems.

MR. BABCOCK: I think this map is correct, is what we're saying they've come down the 200 foot strip and

they've got this R-5 zone, they came out to the road, went down the R-5 zone and went back in 200 feet, that's what they did because they made this whole thing this big piece where they talked about the senior citizen housing is R-5 and they brought the R-5 all the way out to 32.

MR. TORLEY: For an exit.

MR. BABCOCK: Yeah, typically, I guess that's what they did.

MR. REIS: Greg, what's north of the intended use here?

MR. SHAW: Just a large undeveloped parcel, maybe total size 20 acres or so and immediately north of that is Frank Lander's Paving.

MR. REIS: May I make a suggestion that we condense for all the variances that they're going to require to establish this, that we put it into the request at this time, rather than at another time.

MR. NUGENT: I don't have a problem with that.

MR. KANE: I'd rather clean everything up for sure, get it all on record.

MR. NUGENT: My one question that keeps nagging at me is why did this gentleman buy only 55 feet when if he bought 60 feet, it probably would have solved a lot of the problem. Was there a reason for that, I mean, I understand that the building cannot be more than 30 feet and you're only making 25 so that's fine.

MR. SHAW: We're encroaching with the building 25 feet into the now R-5, on the present R-5 zone, if we purchased a hundred feet, it really wouldn't make any difference, we're still limited by that magic number of 30, we're 25, we're less than 30, if they made the lot 200 feet wide again we're still limited by the number 30.

MR. NUGENT: But not for parking and not for lot line and not for building height.

MR. BABCOCK: Mr. Chairman, what we did was just maybe to clarify that a little bit, the side yard setback is 30 feet in and that's what he's maintaining by buying this amount of property, the building height is regulated by the opposite side of the building that's not going to change, which is only a foot off the property line or four feet exactly.

MR. TORLEY: So the--

MR. BABCOCK: The building height doesn't, I mean, the new building doesn't really affect it, except because you've got to go back and look at it and now you're doing the other side of the building that's already existing.

MR. SHAW: The reason we're coming in for the building height is while it's dictated by the four feet to the south property line the existing building is 18 feet, we want to go 22, therefore, that triggers a variance application to this board. If we were only going to go 18, same as the existing building, then it would fall into the pre-existing, non-conforming conversation which we had a minute or two ago.

MR. NUGENT: This gentleman has been before us before and the reason was that big a rug in specific lengths he didn't have room to store them in 18 foot high building.

MR. SHAW: Correct, that's a good point you brought out because parking is always an issue, even though we're adding parking, it's really deficient with respect to the zoning. This addition is going to be purely warehouse storage of the rugs, no office, no retail, no walk in, just pure warehouse so that's why we feel by adding parking spaces to what's presently there, even though we're deficient with respect to the zoning, it's really a plus.

MR. BABCOCK: I don't know that that project ever went.

MR. NUGENT: It didn't but they were before us, I remember.

MR. BABCOCK: Yeah, I think there was an application but I don't think that they ever built the building and that's what he's saying now today, again, if my conversation with him is that the 15 foot long rugs he can't stand up in a 18 foot high building because you've got the bar joists and whatever hanging down.

MR. NUGENT: That was his argument then.

MR. TORLEY: If you have a larger piece of the property, the parking problems go away and you're saying this is a warehouse but see then he's not going to be converting some of the existing building into more retail space.

MR. SHAW: No, that's why you'll see that we'll be going before the planning board for site plan approval and the drawing clearly delineates what the office is going to be, the retail display area is going to be with respect to square footage and the new addition. And one point about going further into his property, you'll notice on the drawings there are federally regulated wetlands on that parcel, so we can go to the north all we want and we're just going to be in the wetlands which makes the property useless to us anyway.

MR. TORLEY: Although the front part, the parking.

MR. SHAW: The front would.

MR. TORLEY: Further north you bring the parking then you won't have to encroach on the wetlands. In any case, I'm not familiar with the regulations, what are the regulations requiring about pavement next to wetlands?

MR. SHAW: Not a problem, you can go right up to the wetlands as long as they're federal. If they're DEC wetlands, they have 100 foot buffer that you have to keep all disturbance 100 feet off.

MR. TORLEY: If these are federally regulated wetlands, would they also be DEC regulated?

MR. SHAW: No, two different animals.

MR. BABCOCK: One or the other.

MR. SHAW: I think to be DEC wetlands, they have to be a minimum of 12 acres in size where federally regulated wetlands can be as large as this area right here.

MR. NUGENT: I'll accept a motion.

MR. REIS: Make a motion that we set up Mr. Seymour Borden for his requested variances and add to--

MR. SHAW: All the non-conforming conditions.

MR. REIS: You'll list them again for the record, Greg, I think it would make sense.

MR. SHAW: That would be the variances that we'd be requesting would be for building height, would be for the parking spaces and would be for the front yard setback. And in addition to those variances, the pre-existing, non-conforming conditions that would be added to the application would be minimum lot area, minimum lot width, minimum one yard setback minimum both yards setback and that should be it.

MR. KANE: Second the motion.

ROLL CALL

MR. TORLEY	AYE
MR. REIS	AYE
MR. KANE	AYE
MR. NUGENT	AYE

MR. TORLEY: When you come back, I'd appreciate it if you'd be prepared to speak about the conversion of the residential lands into commercial, still a little leery about that.

MR. SHAW: There's not too much more to say, I understand your point, but again, if we were to go from the lot line change before I come for the variance, would that make you feel more comfortable because

February 26, 2001

19

effectively, it's the same thing.

MR. KRIEGER: You need the criteria?

MR. SHAW: Give it to me.

UNRECORDED

THIS INDENTURE, made the 1st day of August, nineteen hundred and eighty-five, BETWEEN JOHN W. COAKLEY, residing at 18 Park Hill Drive, Town of New Windsor, Orange County, New York,

party of the first part, and SEYMOUR BORDEN and TERRELL BORDEN, husband and wife, both residing at 84 Sycamore Drive, City of Middletown, Orange County, New York,

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of New Windsor, County of Orange, State of New York, and more accurately bounded and described as follows:

BEGINNING at a point in the northwesterly line of N.Y.S. Route 32 which is the northeasterly corner of lands conveyed by Conrad F. Stenglein and Estelle Stenglein to Balmville Estates, Inc. by deed dated November 18, 1960 and recorded in the Office of the Clerk of Orange County on November 21, 1960 in Liber 1574 of Deeds at page 365; thence along the northwesterly line of Route 32 established by Notice of Appropriation filed by New York State Department of Public Works in the Office of the Clerk of Orange County on May 23, 1960 in Liber 1550 of Deeds at page 584 South 40° 46' 10" West 110.52 feet; thence through said lands of Balmville Estates, Inc. North 43° 36' 30" West 210.83 feet; thence North 46° 23' 30" East 110 feet; thence along the South line of lands of Conrad F. Stenglein South 43° 36' 30" East 200 feet to the point or place of beginning.

BEING the same premises described in a deed dated March 26, 1974 from C & F Company, Inc. to John W. Coakley recorded in the Orange County Clerk's Office on March 28, 1974 in Liber 1973 of Deeds at page 638.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

Sec. 35

Block 1

Lot 54.1

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

[Signature]

[Signature]
JOHN W. COAKLEY

LIBER 2392 pg 234



1763

Town of New Windsor

555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4631
Fax: (845) 563-4693

Assessors Office

January 24, 2001

35

Gregory J. Shaw
744 Broadway
Newburgh, NY 12550

Re: 35-1-53.21 Joseph Kaufman Prop. Of New Windsor
35-1-54.1 Terri & Seymour Borden

Dear Mr. Shaw,

According to our records, the attached list of property owners are within five hundred (500) feet of the above referenced property.

The charge for this service is \$55.00, minus your deposit of \$25.00.

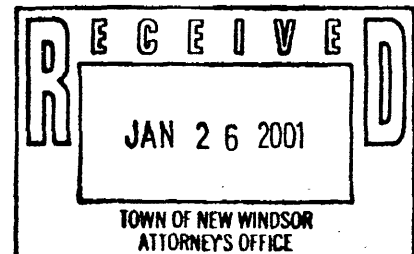
Please remit the balance of \$30.00 to the Town Clerk's Office.

Sincerely,

Leslie Cook
Sole Assessor

LC/bw
Attachments

CC:Pat Corsetti, ZBA



4-2-21.2
RPA Associates, LLC
C/o AVR Realty Company
1 Executive Blvd
Yonkers, NY 10701

35-1-56
Maria & Aniello Guerriero
306 Windsor Highway
New Windsor, NY 12553

42-1-1.22
Richard Harris
275 Windsor Highway
New Windsor, NY 12553

35-1-44
Tracy & George Chaleff
266 Windsor Highway
New Windsor, NY 12553

35-1-57 35-1-59.1
Wabno Inc.
310 Windsor Highway
New Windsor, NY 12553

42-1-13
Anne Marino
293 Windsor Highway
New Windsor, NY 12553

35-1-45
George Ross
P.O. Box 616
Pomona, NY 10970

35-1-58
Aliya Inc.
115 Corporate Drive
New Windsor, NY 12553

42-1-14
KLJ Corporation
P.O. Box 4520
New Windsor, NY 12553

35-1-46 35-1-47 35-1-53.22
Philis Silver & Ronald Lander
12 Cimorelli Drive
New Windsor, NY 12553

35-1-62
Consolidated Rail Corp.
6 Penn Center Plaza
Philadelphia, Pa 19103

42-1-15
Gladys Gorton
297 Windsor Highway
New Windsor, NY 12553

35-1-48
United National Mortgage LLC
280 Windsor Highway
New Windsor, NY 12553

35-1-102.2
Route 32 Associates
C/o Daniel Rubin Co.
147-39 175 th Street
Jamaica NY 11434

42-1-16
Gerald Hecht
25 Ona Lane
New Windsor, NY 12553

35-1-50
Faith & Stephen Kuprych
279 Windsor Highway
New Windsor, NY 12553

35-1-107 35-1-108
Windsor Highway Realty
176 New Windsor Highway
N. Amityville, NY 11701

42-1-18
Ruth Bakker
20 Lannis Ave
New Windsor, NY 12553

35-1-51
Agnes Cavalari
89 Bethlehem Road
New Windsor, NY 12553

35-1-110
Rosemarie & James Petro
238 Maharay Lane
New Windsor, NY 12553

42-1-19
Alma & Frank McKeon
301 Windsor Highway
New Windsor, NY 12553

35-1-52
Scott Rollo
287 Windsor Highway
New Windsor, NY 12553

38-1-22
Khan, Mohammad Haleem & Najum Sahar
16 Green Bower Lane
New City, NY 10956

42-1-20
Robert Pavignano
62 Woodward Terr.
Central Valley, NY 10917

35-1-54.21
Poly Works Inc.
P.O. Box 4417
302 Windsor Highway
New Windsor, NY 12553

42-1-1.1
Carlos Scheer
38 Dogwood Hills Road
Newburgh, NY 12550

42-1-21
Mary & John Craig
22 Lannis Ave
New Windsor, NY 12553

35-1-55
Amerco Real Estate Co
C/o U-Haul Lower Hudson Valley
300 Windsor Highway
New Windsor, NY 12553

42-1-1.21
Jennie & Sabatino Martinisi
273 Windsor Highway
New Windsor, NY 12553

45-1-1.1
Genevieve & Joseph Mianoski
24 Lannis Ave
New Windsor, NY 12553

✓ 45-1-1.21 45-1-43

Loretta & Edward Trizinsky
309 Windsor Highway
New Windsor, NY 12553

45-1-1.22

Leone Properties, LLC
348 Route 32
P.O. Box 141
Central Valley, NY 10917

45-1-42

Susan Schatz
8 Bridge Street
Cornwall, NY 12518

Continental Manor II
Spinnaker Management
3111 State Route 208
Wallkill, NY 12589

Washington Green
Board of Directors
C/o Emerald Mgmt.
P.O. Box 268, 2299 Route 9N
Fishkill, NY 12524

cc: Greg Shaw

Prelim. -
Feb. 26, 2001

OFFICE OF THE PLANNING BOARD - TOWN OF NEW WINDSOR #01-03
ORANGE COUNTY, NY

NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION

PLANNING BOARD FILE NUMBER: 01-19

DATE: 22 FEB 01

APPLICANT: SEYMOUR & TERRI BORDEN

84 SYCAMORE DRIVE

MIDDLETOWN NY 10940

Cayfest
Mill Outlet.

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 14 DEC 00

FOR (~~SUBDIVISION~~ - SITE PLAN)

LOCATED AT WINDSOR HIGHWAY

ZONE C + R-5

DESCRIPTION OF EXISTING SITE: SEC: 35 BLOCK: 1 LOT: 58.1
53.21

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

1) FRONT YARD BUILDING HT and PARKING
VARIANCE.

2) DETERMINE IF VARIANCES REQ'D FOR
CONTINUED NON-CONFORMANCES (SEE **)


MICHAEL BABCOCK
BUILDING INSPECTOR

REQUIREMENTS		PROPOSED OR AVAILABLE	VARIANCE REQUEST
ZONE	<u>C</u>	USE <u>A-1</u>	
MIN. LOT AREA	<u>40,000 SF</u>	33,454 PROPOSED 22,596 EXISTING	<u>**</u>
MIN. LOT WIDTH	<u>200 FT</u>	165 PROPOSED 110 EXISTING	<u>**</u>
REQ'D FRONT YD	<u>60 FT</u>	42 PROPOSED 47 EXISTING	<u>18 FT</u>
REQ'D SIDE YD.	<u>30 FT</u>	4 PROPOSED 4 EXISTING	<u>**</u>
REQ'D TOTAL SIDE YD.	<u>70 FT</u>	34 PROPOSED 29 EXISTING	<u>**</u>
REQ'D REAR YD.	<u>30 FT</u>	34 PROPOSED/EXIST	<u>-</u>
REQ'D FRONTAGE	<u>N/A</u>	165 PROPOSED 110 EXISTING	<u>-</u>
MAX. BLDG. HT.	<u>12" FT NIL = 4'0"</u>	22 PROPOSED 18 EXISTING	<u>18 FT</u>
FLOOR AREA RATIO	<u>0.50</u>	0.47 PROPOSED 0.42 EXISTING	<u>-</u>
MIN. LIVABLE AREA	<u>N/A</u>	N/A	<u>-</u>
DEV. COVERAGE	<u>N/A %</u>	N/A %	<u>- %</u>
O/S PARKING SPACES	<u>64 CURRENT 70 AS PROPOSED</u>	<u>7 CURRENT 11 PROPOSED</u>	<u>59</u>

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:
 (914-563-4630) TO MAKE AN APPOINTMENT WITH THE ZONING BOARD
 OF APPEALS. ~~BY FILE EXISTING NON-CONFORMING~~
~~** CONTINUED NON-CONFORMING - DETERMINE IF VARIANCE REQ'D~~

CC: Z.B.A., APPLICANT, P.B. ENGINEER, P.B. FILE

CARPET MILL OUTLET SITE PLAN (01-19) ROUTE 32

Mr. Gregory Shaw from Shaw Engineering appeared before the board for this proposal.

MR. SHAW: This is a site plan application for Carpet Mill Outlet Warehouse and Showroom. As I just mentioned to the board, it's in the C zone, it's on the west side of Windsor Highway and presently, it's about 22,600 square feet. What we're proposing to do is purchase a 55 foot strip of land from the lands of Kaufman to the north, incorporate it into the lot of Carpet Mill Outlet and then build a new 6,000 square foot addition on the north side of the existing building for warehouse use. If we take a look at the zoning schedule, you'll see many notations, there are numerous pre-existing, non-conforming conditions, there are also notations where variances are going to be required for an existing, non-conforming condition that exists and also variance is required from the Zoning Board for new conditions which are being created by the construction of the new addition. Specifically, is a reduction in the front yard setback and also in the building height, which is going to exceed the existing height of the building, I believe the existing building is 18 feet and the new addition is going to be 22 feet, so what we're looking for is a rejection to allow us to go to the ZBA to get our new variances and also have the board make a determination how they want to handle the non-conforming conditions, whether they're grandfathered or whether they'd want them brought into the zoning application for the variance.

MR. PETRO: You're allowed to expand by 30 percent, is he over, exceeding 30 percent?

MR. EDSALL: It's not a non-conforming use, you're allowed to cross the zone line by 30 feet.

MR. SHAW: And the point I'd like to bring out is that what you have is the zone line running along the northerly property line of Carpet Mill's lot as it exists today, this additional 55 feet is going to be in an R-5 zone, okay, and Mark and I have spent some time reviewing this and it's Mark's opinion again with the

final determination being made by this board that that is permitted under Section 48-6C of the New Windsor Zoning Ordinance which allows this commercial construction to take place in a residential zone.

MR. PETRO: Can't you expand 30 feet into another zone?

MR. EDSALL: That's it, that's the section.

MR. PETRO: Why are you asking us if it's an extension of a grandfathered, non-conforming use, isn't that for zoning board?

MR. SHAW: That's the ZBA's determination, we have to get new variances, maybe they want to do a little housecleaning with respect to non-conforming conditions of the site as it exists today.

MR. PETRO: Make a motion for final approval.

MR. ARGENIO: So moved.

MR. LANDER: Second it.

MR. PETRO: Motion's been made and seconded to approve. Is there any further discussion from the Board members? If not, roll call.

ROLL CALL

MR. ARGENIO	NO
MR. BRESNAN	NO
MR. KARNAVEZOS	NO
MR. LANDER	NO
MR. PETRO	NO

MR. PETRO: Thank you. You know the whole story, I'm not going going to go over it again.